

1
2 BEFORE THE PERSONNEL APPEALS BOARD

3 STATE OF WASHINGTON

4
5 ELIZA FELICIANO,) Case No. DISM-04-0032
6 Appellant,)
7 v.) FINDINGS OF FACT, CONCLUSIONS OF
8 UNIVERSITY OF WASHINGTON,) LAW AND ORDER OF THE BOARD
9 Respondent.)
10

11 I. INTRODUCTION

12
13 1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, BUSSE
14 NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held at the
15 University of Washington, South Campus Center, Room 146, Seattle, Washington, on
16 March 18, 2005.

17
18 1.2 **Appearances.** Appellant Eliza Feliciano appeared *pro se*. Jeffrey W. Davis, Assistant
19 Attorney General, represented Respondent University of Washington.

20
21 1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for chronic
22 tardiness, absenteeism, neglect of duty, and failure to follow policy.

23 II. FINDINGS OF FACT

24
25 2.1 Appellant Eliza Feliciano was a permanent employee for Respondent University of
26 Washington. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules

1 promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the
2 Personnel Appeals Board on March 25, 2004.

3
4 2.2 Appellant became employed as a .75 FTE Central Processing Technician 1 in Laboratory
5 Medicine on November 6, 2000. Appellant's duties included processing laboratory medical
6 requests, ensuring specimens submitted matched corresponding paperwork, and entering
7 information into a computer. Appellant's shift started a 7 a.m.

8
9 2.3 The department's sick leave policy requires employees to call their supervisors "as soon as
10 you know you will not be able to report to work as scheduled." The policy further requires
11 employees to "give as much notice as possible, but at least, one hour before the start of your shift."
12 Appellant was trained on the attendance policy when she began working for the department.

13
14 2.4 Appellant's personnel history includes the following:

- 15
- 16 • On September 9, 2001, Supervisor Shawne Olson verbally counseled Appellant for
17 excessive absenteeism and tardiness because in the prior three months, Appellant used five
18 and one half days of sick leave and after ten months on the job, Appellant had exhausted all
19 her sick leave and had been on unpaid leave for a month between April and May 2001.
 - 20 • On October 8 and December 3, 2001, Ms. Olson again verbally counseled Appellant about
21 her excessive absenteeism.
 - 22 • On January 8, 2002, Ms. Olson provided Appellant with letter of counsel after she was
23 absent on five occasions and tardy on another five occasions in one month.

24 2.5 Between January 20 and April 11, 2002, the department provided Appellant with
25 accommodation by reducing her work hours from 30 hours per week to 20 hours per week. During
26 this time period, Appellant arrived late to work on four occasions, and Ms. Olson provided her with
a letter of reprimand on March 20, 2002, as a result.

1
2 2.6 On April 11, 2002, Appellant began a three-month leave of absence under the Family
3 Medical Leave Act (FMLA). Appellant returned to work on July 7, 2002.
4

5 2.7 On July 15, 2003, Ms. Olson met with Appellant to discuss her absenteeism and tardiness.
6 Ms. Olson counseled Appellant on the impact to patients and on the morale of other employees due
7 to the uncertainty of her presence at work. Appellant indicated she would improve her attendance.
8 However, in the following three weeks, Appellant missed three and one half days of work and she
9 was tardy four times. Appellant subsequently went on a four-week FMLA absence from August 6
10 until September 4, 2003.
11

12 2.8 After her return to work in September 2003, Appellant was late to work on five occasions,
13 called in sick after the start of her shift on two occasions, called in sick 15 minutes before the start
14 of her shift on one occasion and failed to call or report to work on one occasion. In October and
15 November 2003, Appellant continued to be tardy or absent from work, and failed to report her
16 absences in a timely manner as required by policy.
17

18 2.9 On November 15, 16, and 17, Appellant called in sick. On November 19, Appellant called
19 and spoke with Ms. Olson, indicating she was sick and did not know when she would return to
20 work. Appellant indicated that she planned to request family medical leave and had the documents
21 necessary to submit a formal request. Ms. Olson directed her to submit the forms immediately.
22

23 2.10 On November 21, despite Appellant's indication that she had the FMLA forms, Janet
24 Sullivan, with the human resources department, sent Appellant the forms. However, Appellant
25
26

1 failed to submit the FMLA request to her employer, and she failed to make any follow-up telephone
2 calls to Ms. Olson to indicate why.

3
4 2.11 From November 20, 2003, to January 11, 2004, Appellant did not report to work anytime.
5 However, on January 5, 2004, Appellant called her lead worker, Djavad Ebadani, to discuss her
6 work schedule. Mr. Ebadani indicated to Appellant that he had not taken her off the schedule in
7 either December 2003 or January 2004, because he was unaware when she was returning to work.
8 Appellant indicated to Mr. Ebadani that she was going to see her doctor and would let the
9 department know when she would be able to work. Mr. Ebadani directed Appellant to contact Ms.
10 Olson to explain the situation. Instead, Appellant left Mr. Ebadani a voicemail message the
11 following day stating that she would return to work on January 12.

12
13 2.12 On January 12, 2005, Appellant reported to work. When questioned about her absence and
14 lack of reporting, Appellant indicated that she believed her doctor had faxed the FMLA document
15 to UWMC on December 8, 2004.

16
17 2.13 Ms. Olson, Area Supervisor of the Specimen Processing Services, testified regarding the
18 effects of Appellant's repeated absences and late arrivals on patient care, the operations of the lab,
19 and on the morale of other employees. Ms. Olson testified that patient tests are time sensitive and
20 when a scheduled staff member does not report to work, the burden of processing a high volume of
21 tests falls on other staff and takes them away from their own responsibilities. In addition, other
22 staff members are sometimes required to work additional hours after having already worked an
23 eight-hour shift or other personnel are called back to work, which requires the department to
24 compensate them with "callback" pay, impacting the budget.

1 2.14 In a memo dated February 6, 2004, Ms. Olson recommended to the appointing authority that
2 Appellant be terminated for her continued willful disregard of the University's policy and practices,
3 her continued absences and late arrivals, and for failing to report to work between November 20,
4 2003, and January 11, 2004.

5
6 2.15 By letter dated February 12, 2004, Paul Ishizuka, Associate Executive Director/Chief
7 Financial Officer, notified Appellant of her dismissal. Mr. Ishizuka charged Appellant with chronic
8 tardiness and absenteeism, insubordination, neglect of duty and willful violation of the University's
9 policies and procedures.

10 11 **III. ARGUMENTS OF THE PARTIES**

12 3.1 Respondent argues that Appellant consistently ignored her department's needs for a prompt
13 start to the day by frequently arriving late or not at all, calling in late and, finally, disappearing for
14 seven weeks without making contact with the department whatsoever. Respondent asserts that
15 Appellant's late arrivals harmed the patient and health care providers at UWMC. Respondent
16 argues that despite repeated guidance and opportunities to improve her attendance, Appellant
17 continued to be tardy and absent. Respondent argues that Appellant's flagrant disregard of the
18 department's need to have her present at work warrants termination.

19
20 3.2 Appellant admits her supervisor counseled her regarding work attendance issues. She
21 asserts, however, that she had reasonable reasons for her absences, including a pregnancy with
22 many complications and a child with special medical needs. Appellant contends that after the birth
23 of her second child, she was diagnosed with fatigue, stress and chronic muscle tendonitis for which
24 she obtained a medical excuse to take family medical leave. Appellant argues that in September
25 2002, Ms. Olson verbally told her that her leave issues had improved. Appellant claims she was
26

1 trying hard to provide the department with her doctor's notes but asserts the department wanted to
2 terminate her regardless.

3 4 IV. CONCLUSIONS OF LAW

5 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

6
7 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
8 the charges upon which the action was initiated by proving by a preponderance of the credible
9 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
10 sanction was appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-
11 240(1) Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

12
13 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
14 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
15 of Social & Health Services, PAB No. D86-119 (1987).

16
17 4.4 Willful violation of published employing agency or institution or Personnel Resources
18 Board rules or regulations is established by facts showing the existence and publication of the rules
19 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
20 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

21
22 4.5 Respondent has met its burden of proof that Appellant neglected her duty and violated the
23 University's leave policy when, in September and October 2003, Appellant continued to display an
24 unacceptable and excessive pattern of arriving late to work, calling in after the start of her work
25 shift and failing to report to work without calling in. Furthermore, Appellant neglected her duty

1 and violated policy when she failed to report to work from November 20, 2003, through January 11,
2 2004. Appellant was aware of her duty to report to work or, if unable to report to work, to properly
3 report her absence from work to her supervisor. Nonetheless, Appellant continued to be chronically
4 tardy and absent despite repeated written counseling and repeated warnings from her supervisor,
5 and more seriously, Appellant was absent for a seven week period without the proper approval.

6
7 4.6 Insubordination is the refusal to comply with a lawful order or directive given by a superior
8 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.
9 Dep't of Social & Health Services, PAB No. D94-025 (1995).

10
11 4.7 Respondent has met its burden of proving by a preponderance of the credible evidence that
12 Appellant was insubordinate when she failed to comply with her lead's directive to contact Ms.
13 Olson regarding her extended absence.

14
15 4.8 Although it is not appropriate to initiate discipline based on prior formal and informal
16 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the
17 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.
18 D93-163 (1995).

19
20 4.9 In determining whether a sanction imposed is appropriate, consideration must be given to
21 the facts and circumstances, including the seriousness of the offenses. The penalty should not be
22 disturbed unless it is too severe. The sanction imposed should be sufficient to prevent recurrence,
23 to deter others from similar misconduct, and to maintain the integrity of the program. Holladay v.
24 Dep't of Veterans Affairs, PAB No. D91-084 (1992).

1 4.10 Appellant was on notice that her continued tardiness, absenteeism and failure to comply
2 with the University's call in procedures would result in disciplinary action. Although Appellant
3 argued that her doctor's office was supposed to fax her FMLA request to her department, Appellant
4 offered no evidence to support her contention or to show that the form was ever faxed.
5 Furthermore, Appellant failed to provide any compelling reason for her failure to follow-up with
6 her supervisor or the human resources department to verify that her FMLA had been received and
7 her extended absence approved.

8
9 4.11 Under the facts and circumstances of this case, including Appellant's employment history
10 and her pattern of excessive absenteeism and tardiness, we conclude that Respondent has proven
11 that the sanction of dismissal is appropriate and that the appeal should be denied.

12
13 **V. ORDER**

14 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Eliza Feliciano is denied.

15
16 DATED this _____ day of _____, 2005.

17
18 WASHINGTON STATE PERSONNEL APPEALS BOARD

19
20 _____
Busse Nutley, Vice Chair

21
22 _____
Gerald L. Morgen, Member